

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 7

TROY GROVE QUARRY, a Division of	)	
RIVERSTONE GROUP, INC., and	)	
VERMILION QUARRY, a Division of	)	
RIVERSTONE GROUP, INC.	)	
Employer	)	
	)	
and	)	Case No. 25-RD-269960
	)	
CRAIG S. PARSONS,	)	
Petitioner	)	
	)	
and	)	
	)	
INTERNATIONAL UNION OF OPERATING	)	
ENGINEERS, LOCAL NO. 150, AFL-CIO	)	
Union	)	

**EMPLOYER’S OPPOSITION TO REQUEST FOR REVIEW**

NOW COMES the Employer, TROY GROVE QUARRY, a Division of RIVERSTONE GROUP, INC., and VERMILION QUARRY, a Division of RIVERSTONE GROUP, INC. (“Employer” or “RiverStone”), by and through its attorneys, CALIFF & HARPER, P.C., pursuant to 29 CFR 102.67(f), and for Employer’s Opposition to Request for Review, states as follows:

**I. BACKGROUND**

In the DECISION ON CHALLENGED BALLOTS AND OBJECTIONS, ORDER DIRECTING HEARING AND NOTICE OF HEARING ON CHALLENGED BALLOTS AND OBJECTIONS (“Order” or “Decision”) dated April 9, 2021, the Regional Director ordered a hearing limited to the following challenges and objections:

**CONCLUSION AND ORDER**

I have concluded that the challenged ballots of Thomas and Schmidt raise substantial and material issues of fact that can best be resolved by hearing. I have also concluded that the

evidence described in the offer of proof submitted by the Employer in support of its objections could be grounds for overturning the election if introduced at a hearing. Accordingly, in accordance with Section 102.69(c)(1)(ii) of the Board's Rules and Regulations, IT IS ORDERED that a hearing shall be held before a Hearing Officer designated by me, for the purpose of receiving evidence to resolve the issues raised with respect to the challenges and objections. At the hearing, the parties will have the right to appear in person to give testimony, and to examine and cross-examine witnesses.

(Decision at 5). The relevant facts are as stated in the Decision.<sup>1</sup>

The Decision provided a deadline of April 23, 2021 for a request for review of the Decision. The Union filed its Request for Review on April 23, 2021. Employer timely files this Opposition to Request for Review within five business days of the April 23, 2021 filing deadline.

## **II. VOTER INELIGIBILITY OF ANDERSON, CARR, ELLENA & KOOI**

Under Board precedent, a strike is presumed to be an economic strike unless there is a Board ruling in an unfair labor practice proceeding that the strike is an unfair labor practice strike. *Times Square Stores, Corp.*, 79 NLRB 361, 365 (1948). In her Decision, the Regional Director ruled that Anderson, Carr, Ellena, and Kooi are not eligible voters:

With regard to Anderson, Carr, Ellena, and Kooi, the Union takes the position that they are eligible voters inasmuch as they are engaged in an unfair labor practice strike and have not been permanently replaced. However, a finding that a strike was caused by unfair labor practices may be made only in unfair labor practice proceedings. *Times Square Stores Corporation*, 79 NLRB 361, 365 (1948). There has been no finding in any unfair labor practice case that the strike to which both parties point for consideration of voter eligibility involving these voters was caused by unfair labor practices, nor are any such proceedings pending alleging that the employees are engaged in an unfair labor practice strike. Therefore, I must presume that the strike is an economic strike, and the strikers who participated therein are presumptive economic strikers. See *Times Square Stores* at 364. Accordingly, I reject the Union's position that they are eligible voters and sustain the challenges to the ballots of Anderson, Carr, Ellena, and Kooi.

(Decision at 3-4).

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<sup>1</sup> The Union has raised irrelevant facts and misstated facts in its lengthy Request for Review. At no time in its Request for Review does the Union state that the Regional Director's decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of a party. Therefore, there is no factual issue that warrants discussion in a resistance, and Employer's Opposition to the Request for Review does not do so. This is not an admission by Employer.

In its Request for Review, the Union argues Anderson, Carr, Ellena, and Kooi are eligible as unfair labor practice strikers because an administrative law judge in Consolidated Complaint Nos. 25-CA-234477, 25-CA-242081, 25-CA-244883, and 25-CA-246978 found that unfair labor practices had occurred. (Request for Review at 6-7). The Union is wrong because Board precedent is clear that a strike is presumed to be an economic strike unless the Board has ruled in an unfair labor practice proceeding that the strike is a ULP strike and there is no Board ruling in an unfair labor practice proceeding that the strike at Troy Grove and Vermilion is an unfair labor practice strike. *Times Square Stores, Corp.*, 79 NLRB at 365. The Union fails to cite any precedent supporting its position. Therefore, the Decision of the Regional Director is supported by Board precedent and the facts in the instant case, and Anderson, Carr, Ellena, and Kooi are ineligible voters despite the Union's argument to the contrary.

## **II. OBJECTIONS TO CONDUCT OF ELECTION AND CONDUCT AFFECTING RESULTS OF ELECTION**

Under Board Rules and Regulations, a request for review a Regional Director action must be based upon at least one of the following grounds for review:

(d) Grounds for review. The Board will grant a request for review only where compelling reasons exist therefor. Accordingly, a request for review may be granted only upon one or more of the following grounds:

(1) That a substantial question of law or policy is raised because of:

(i) The absence of; or

(ii) A departure from, officially reported Board precedent.

(2) That the Regional Director's decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of a party.

(3) That the conduct of any hearing or any ruling made in connection with the proceeding has resulted in prejudicial error.

(4) That there are compelling reasons for reconsideration of an important Board rule or policy.

(29 CFR 102.67(d)). Employer objects to the conduct of the election due to mail forwarding of mail-in ballot and the mailing irregularity with respect to Travis Schmidt's duplicate ballot with no postmark; Employer also objections to conduct affecting the results of the election due to Union

involvement in the collection, handling, or mailing of Schmidt's duplicate ballot. (Decision at 5; Employer's Objections to the Conduct of the Election & Conduct Affecting the Results of the Election at 3-5). In her Decision, the Regional Director ruled Employer's objection to the conduct of the election and objection to conduct affecting the results of the election and written offers of proof in support thereof were sufficient to go to hearing:

I have also concluded that the evidence described in the offer of proof submitted by the Employer in support of its objections could be grounds for overturning the election if introduced at a hearing.

(Decision at 5).

In its Request for Review of the Regional Director's conclusion and order to send Employer's objections for hearing, the Union fails to state a ground for review that would cause its request to be granted. The Union cites to no substantial question of law or policy, no clearly erroneous error on the record that prejudicially affects the Union, no prejudicial error, and no compelling reasons for reconsideration of an important Board rule or policy. Rather, the Union merely uses the Request for Review as an opportunity to share its thinking, which again is not an appropriate ground for review.

### **III. CONCLUSION**

For the foregoing reasons, Employer respectfully requests that the Union's Request for Review be denied.

Date: April 28, 2021

TROY GROVE QUARRY, a Division of RIVERSTONE GROUP, INC., and VERMILION QUARRY, a Division of RIVERSTONE GROUP, INC., Employer,

*/s/Arthur W. Eggers*

By: \_\_\_\_\_

Arthur W. Eggers

For: Califf & Harper, P.C.

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UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
SUBREGION 33

TROY GROVE QUARRY, a Division of	)	
RIVERSTONE GROUP, INC., and	)	
VERMILION QUARRY, a Division of	)	
RIVERSTONE GROUP, INC.	)	
Employer	)	
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and	)	Case No. 25-RD-269960
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CRAIG S. PARSONS,	)	
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INTERNATIONAL UNION OF OPERATING	)	
ENGINEERS, LOCAL NO. 150, AFL-CIO	)	
Union	)	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 28th day of April, 2021, the foregoing EMPLOYER'S OPPOSITION TO REQUEST FOR REVIEW of Troy Grove Quarry, a Division of RiverStone Group, Inc., and Vermilion Quarry, a Division of RiverStone Group, Inc., was electronically filed with the National Labor Relations Board and served upon the following:

by Email to:

Petitioner

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and by U.S. Mail Certified Mail Return Receipt Requested to:

Union

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Local 150, AFL-CIO  
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Countryside, IL 60525-3992

TROY GROVE QUARRY, a Division of  
RIVERSTONE GROUP, INC., and VERMILION  
QUARRY, a Division of RIVERSTONE GROUP,  
INC., Employer,

*/s/Arthur W. Eggers*

By: \_\_\_\_\_

Arthur W. Eggers

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